

United States Bankruptcy Court

District of New Jersey

Mitchell H. Cohen U.S. Courthouse

P.O. Box 2067

Camden, New Jersey 08101

JUDITH H. WIZMUR

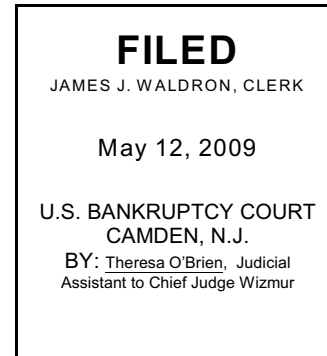
Chief, U.S. Bankruptcy Judge

(856) 757-5126

May 12, 2009

April Nottingham
201 Sandringham Road
Cherry Hill, New Jersey 08003

Re: April Nottingham
Case No. 09-13190/JHW
LETTER OPINION



Dear Ms. Nottingham,

I am in receipt of two handwritten motions on your behalf. On April 16, 2009, I received a letter from you seeking to extend the automatic stay in your case, and on April 27, 2009, a letter seeking to reopen your case and to pay your overdue filing fee. On this record, I am unable to grant either of your two requests.

I note that this is your second bankruptcy filing within the last year. On October 30, 2008, you filed a two page voluntary petition under Chapter 13 of the Bankruptcy Code, case number 08-31276/JHW, along with a certification that you had received credit counseling within the 180 day prepetition period but that you did not have a copy of the certificate available. Your bankruptcy filing did not include Schedules A-J, a Statement of Financial Affairs, a Chapter 13 Plan, a Credit Counseling Statement or a Statement of Current Monthly Income. You made a \$5.00 initial payment with your petition and your application to pay the filing fee in installments was approved. You were given fourteen (14) days to file your missing documents, which was extended at your request until December 1, 2008, upon which date the missing documents were filed. A Certificate of Credit Counseling was filed on December 1, 2008, indicating that credit counseling had been received on November 14, 2008 (two weeks after the date of your bankruptcy petition). Confirmation was originally scheduled for January 14, 2009 and adjourned to February 11, 2009 at your request. Your second filing fee installment of \$25.00, due by November 29, 2008, was received on December 2, 2008. The third installment of \$100.00 was due prior to December 29, 2008 and was not received. Your first case was subsequently dismissed on February 2, 2009, by order dated February 6, 2009, because you failed to pay your full bankruptcy filing fee. The case was closed

on February 20, 2009.

You filed a second voluntary petition under Chapter 13 of the Bankruptcy Code on February 10, 2009. This petition also failed to include Schedules A-J, a Statement of Financial Affairs, a Chapter 13 Plan, a Credit Counseling Statement or a Statement of Current Monthly Income. I agreed to accept the Credit Counseling Statement obtained with respect to your prior bankruptcy case if a copy was provided to the court no later than February 25, 2009. The Certificate was not received by the court until March 31, 2009. You again made a \$5.00 initial payment with your petition and your application to pay the filing fee in installments was approved. You were given fourteen (14) days to file your missing documents, which was extended at your request until March 13, 2009, at which time the missing documents were filed.

On March 4, 2009, I received correspondence from you seeking to extend the automatic stay that was scheduled to terminate thirty (30) days from the date of your petition by operation of 11 U.S.C. § 362(c)(3). A hearing was held on March 9, 2009 and I agreed to extend the automatic stay until mid April. The matter was relisted for April 13, 2009 for further evaluation. No appearance was made on April 13th and the motion was denied. In the interim, on March 9, 2009, you failed to make your second installment payment toward your case filing fee. A hearing for dismissal was scheduled for April 6, 2009. Payment was received on April 6th and no action was taken to dismiss your case. Three days later, you failed to make your third installment payment and your case was again scheduled for a dismissal hearing on May 11, 2009.

On March 20, 2009, you amended your Schedule D, List of Secured Creditors, but failed to pay the \$26.00 filing fee required to be paid in connection with the amended schedule. A notice was issued on March 20 requiring the payment of the additional fee, setting the matter down for hearing on April 20, 2009, and declaring that the case would be dismissed on that date if the fee remained unpaid. Your case was dismissed on April 20, 2009 for failing to pay this fee and for failing to appear at the hearing.

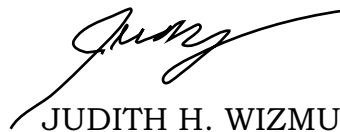
This brings us to your two most recent letters. On April 16, 2009, you moved to extend the application of the automatic stay. You claimed to have been unaware of the hearing date of April 13, 2009. I note that your husband appeared in court at the March 9, 2009 hearing. He explained at that time that you were at the hospital with your mother who was suffering from jaundice. He informed the court that you had a regular paying job with Empire Recording Studios, and he explained that he anticipated paying Capital One Finance in full from the proceeds of a sale of two properties under contract and

scheduled to close later that month. I agreed at that time to extend the stay until the middle of April and I scheduled a return day of April 13, 2009, at which time I would revisit the motion and determine if the matter should go forward. Your husband was informed of that hearing date. The docket also reflects the new hearing date. There is sufficient cause to find constructive notice on this record. No appearance was made on April 13, 2009. I will decline to extend the application of the automatic stay any further.

On April 27, 2009, you moved to reopen your case and to pay your filing fee, claiming once again that you were unaware of the hearing date and that you thought the next hearing was not until May 11, 2009. You explained that you were not aware of an April 23, 2009 hearing and that you were in the hospital with a family member at that time. There was no hearing on April 23rd. The hearing was held on April 20, 2009. The docket indicates that notice of the hearing was sent by the Bankruptcy Noticing Center to the address indicated on your petition as your home address. There is a presumption of receipt when something is properly addressed and mailed. See, e.g., In re Lobato, No. 01-01812, 2002 WL 33939742 (Bankr. D.Idaho Nov. 27, 2002) (BNC certificate creates a presumption of receipt); In re Nelson, No. 01-12016, 2002 WL 32667216, *3 (Bankr. D.Kan. Feb. 26, 2002). No evidence has been introduced to rebut this presumption. No appearance was made and the additional fee was not paid. The case was dismissed and an order to that effect entered on April 23, 2009.

The May 11, 2009 hearing date was another scheduled hearing to dismiss this case for your failure to make the third installment of \$50.00 toward your bankruptcy case filing fee. This amount was due on April 9, 2009 and has not been paid. On this record, I will decline to reinstate the case.

Very truly yours,



JUDITH H. WIZMUR
CHIEF JUDGE
U.S. BANKRUPTCY COURT

JHW:tob

c: Isabel Balboa, Esq.